



U.S. Department of Justice

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Southern District of New York

MEMO ENDORSED

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BY ECF

Hon. Valerie E. Caproni
United State District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Abdul Basit Moosani*, S2 18 Cr. 274
United States v. Muhammad Amir Saleem, S3 18 Cr. 274

Dear Judge Caproni:

The Government writes to respectfully inquire whether the Court expects further briefing regarding defendant Muhammad Amir Saleem's pre-trial motions or is considering whether to conduct a hearing regarding those motions. If the Court is not contemplating either scenario, the Government respectfully requests that the Court reconsider its April 14, 2021 Order declining to exclude time from April 14, 2021 until May 4, 2021 pursuant to 18 U.S.C. § 3161(h)(7)(A), on the grounds that such exclusion was unnecessary because Saleem's pending motions resulted in the exclusion of time pursuant to 18 U.S.C. § 3161(h)(1)(D).

On or about January 7, 2021, Saleem filed pre-trial motions seeking, in general terms, the production and/or disclosure of the identities of informants and cooperation witnesses, evidence that the Government intends to offer at trial pursuant to Federal Rule of Criminal Procedure 404(b), Jenks Act (or Section 3500) material, and Federal Rule of Criminal Procedure Rule 16 discovery material, as well as the preservation of all notes and evidence relevant to his prosecution. The Government responded to Saleem's motions on or about January 28, 2021. Although the Court had previously set February 4, 2021 as the deadline for any replies, Saleem did not file a reply.

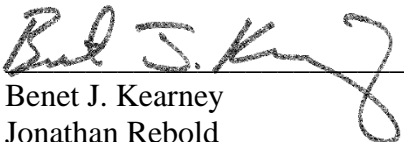
Under the Speedy Trial Act, 18 U.S.C. § 3161, time is automatically excluded for "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. § 3161(h)(1)(D). This provision "excludes time in two situations." *Henderson v. United States*, 476 U.S. 321, 329 (1986). First, for a motion that requires a hearing, the provision excludes "all time between the filing of a motion and the conclusion of the hearing on that motion, whether or not a delay in holding that hearing is 'reasonably necessary.'" *Id.* at 330. Second, for a motion decided on the papers without a hearing, the provision excludes time until "the court receives all the papers it reasonably expects." *Id.* at 329; *see also id.* at 331 ("[F]or motions decided solely on the papers, Congress has allowed exclusion of time during which the parties are filing their briefs."). At that point, Section 3161(h)(1)(H) applies to automatically exclude "[a]ny period of . . . delay reasonably attributable

to any period, not to exceed thirty days, during which any proceedings concerning the defendant is actually under advisement by the court.” 18 U.S.C. § 3161(h)(1)(H). This provision excludes “up to 30 days while the district court has a motion ‘under advisement,’ *i.e.*, 30 days from the time the court receives all the papers it reasonably expects.” *Henderson*, 476 U.S. at 328-29.

Accordingly, should the Court expect additional briefing or intend to conduct a hearing, time would continue to be excluded under Section 3161(h)(1)(D). However, if the Court has received “all of the papers it reasonably expects,” *Henderson*, 476 U.S. at 329, time would have to be excluded pursuant to a different provision of Section 3161, because more than 30 days have passed since the February 4, 2021 reply deadline. The Government therefore respectfully requests that the Court exclude time, pursuant to 18 U.S.C. § 3161(h)(7)(A), from April 14, 2021 until May 4, 2021, in light of the parties’ ongoing negotiations regarding a pre-trial disposition of this case.

Sincerely,

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Application GRANTED. Pursuant to 18 U.S.C. 3161(h)(7)(A), time is excluded from April 14, 2021, to May 4, 2021, because the Court finds that the ends of justice served by accommodating logistical difficulties caused by the COVID-19 pandemic and the complexity of this case outweigh the interests of the public and the Defendants in a speedy trial.

SO ORDERED.


4/19/2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE